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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,144	02/07/2002	Lutz Maas	20294.004	1442
21878	7590	09/09/2004	EXAMINER	
KENNEDY COVINGTON LOBDELL & HICKMAN, LLP 214 N. TRYON STREET HEARST TOWER, 47TH FLOOR CHARLOTTE, NC 28202			DEL SOLE, JOSEPH S	
		ART UNIT	PAPER NUMBER	
		1722		

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/072,144	MAAS ET AL. 
	Examiner	Art Unit
	Joseph S. Del Sole	1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 July 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 2 is/are rejected.
- 7) Claim(s) 3-12 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date, _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Terminal Disclaimer***

1. The terminal disclaimer filed on 7/29/04 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Application No. 10/194,652 has been reviewed and is NOT accepted.

a. The person who signed the terminal disclaimer is not recognized as an officer of the assignee, and he/she has not been established as being authorized to act on behalf of the assignee. See MPEP § 324.

2. An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1 and 2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7 and 8 of

copending Application No. 10/194,652 (published as US2003/0025239) in view of Linz (5,536,157).

Claims 1, 7 and 8 of US2003/0025239 teach a device for melt extrusion spinning and cooling of a filament bundle (claim 1, lines 1-2) by a spinning device having an annular spinning jet (claim 1, lines 1-2) and a cooling device arranged below the spinning device (claim 1, line 5), wherein the cooling device has a blowing chamber for directing a coolant stream onto the filament bundle and a holding device for engaging the blowing chamber between the spinning device and the holding device in an operating position of the blowing chamber substantially centrally to the spinning jet (claim 1, lines 6-11), the blowing chamber being displaceable axially relative to the holding device between the operating position and a replacement position (claim 1, lines 12-16 and claim 7, lines 1-3); and the blowing chamber and the holding device are detachably connected to one another to facilitate replacement of the blowing chamber in the replacement position (claim 8, lines 1-3).

Claims 1, 7 and 8 of US2003/0025239 fail to teach the blowing chamber being of cylindrical shape extended in the axial direction with a porous annular jacket.

Linz teaches a blowing chamber of cylindrical shape extended in the axial direction with a porous annular jacket (Fig 1, #4) for the purpose of dispensing air to the filaments through multiple orifices (col 4, lines 39-54) such that the melt-spun yarn has uniform molecular orientation (col 1, lines 60-67).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of claims 1, 7 and 8 of

US2003/0025239 with a cylindrically shaped blowing chamber extended in the axial direction with a porous annular jacket as taught by Linz because it enables uniform molecular orientation of cooled spun filaments.

This is a provisional obviousness-type double patenting rejection.

5. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of copending Application No. 10/216,463 (published as US2003/0039710) in view of Linz (5,536,157).

Claims 1 and 2 of US2003/0039710 teach a device for melt extrusion spinning and cooling of a filament bundle (claim 1, line 1) by a spinning device having an annular spinning jet (claim 1, lines 2-3) and a cooling device arranged below the spinning device (claim 1, lines 4-5), wherein the cooling device has a blowing chamber for directing a coolant stream onto the filament bundle and a holding device for engaging the blowing chamber between the spinning device and the holding device in an operating position of the blowing chamber substantially centrally to the spinning jet (claim 1, lines 4-10), and the blowing chamber being displaceable axially relative to the holding device between the operating position and a replacement position (claim 1, lines 11-17 and claim 2, lines 1-4).

Claims 1 and 2 of US2003/0039710 fail to teach the blowing chamber being of cylindrical shape extended in the axial direction with a porous annular jacket.

Linz teaches a blowing chamber of cylindrical shape extended in the axial direction with a porous annular jacket (Fig 1, #4) for the purpose of dispensing air to the

filaments through multiple orifices (col 4, lines 39-54) such that the melt-spun yarn has uniform molecular orientation (col 1, lines 60-67).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of claims 1 and 2 of US2003/0039710 with a cylindrically shaped blowing chamber extended in the axial direction with a porous annular jacket as taught by Linz because it enables uniform molecular orientation of cooled spun filaments.

This is a provisional obviousness-type double patenting rejection.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1-12 have been considered but are moot because the terminal disclaimer is improper as discussed above.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

*Joseph S. Del Sole*

J.S.D.

September 7, 2004